

1 BILL NO. S-88-09 - 05

2 SPECIAL ORDINANCE NO. S-148-88

3 AN ORDINANCE approving Contract for
4 Res. 6112-88, Westfield NSA'88,
5 curbside walk, drives, and yardwalks
6 between Gaines Construction Company
7 and the City of Fort Wayne, Indiana,
8 in connection with the Board of Public
9 Works and Safety.

10 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
11 THE CITY OF FORT WAYNE, INDIANA:

12 SECTION 1. That the Contract for Res. 6112-88,
13 Westfield NSA'88, curbside walk, drives, and yardwalks by and
14 between Gaines Construction Company and the City of Fort
15 Wayne, Indiana, in connection with the Board of Public Works
16 and Safety, is hereby ratified, and affirmed and approved in
17 all respects, respectfully for:

18 new construction of curbside walk,
19 drives and yardwalks on Electric
20 Avenue between Taylor and Brown St.
21 (both sides). Also replacement of
22 curbside walk, drives and center
23 island curbing on Carlton Ct. from
24 Carlton Ave. to the North terminus and
25 partial replacement of easement walk
26 between Carlton Ct. and Brooklyn Ave.;

27 involving a total cost of Forty-Five Thousand Seven Hundred
28 Fifty-Eight and 74/100 Dollars (\$45,758.00).

29 SECTION 2. Prior Approval has been requested from
30 Common Council on August 23, 1988. Two copies of said
31 Contract are on file with the Office of the City Clerk and
32 made available for public inspection, according to law.

SECTION 3. That this Ordinance shall be in full force
and effect from and after its passage and any and all
necessary approval by the Mayor.

33 Samuel J. Talarico
34 Councilmember

35 APPROVED AS TO FORM
36 AND LEGALITY

37 J. Timothy McCaulay
38 J. Timothy McCaulay, City Attorney

CONTRACT NO. 6112-88

WESTFIELD NSA'88

BOARD ORDER NO. 31-88

WORK ORDER NO. 10,731

THIS CONTRACT made and entered into in triplicate this 17th day of August, 1988, by and between GAINES CONSTRUCTION CO., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works and Safety, herein called OWNER;

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following: RESOLUTION NO. 6112-88 WESTFIELD NSA'88 - New construction of curbface

walk, drives & yardwalks on Electric Ave. between Taylor & Brown St. (both sides). Also replacement of curbface walk, drives and center island curbing on Carlton Ct. from Carlton Ave. to the North Terminus and partial replacement of easement walk between Carlton Ct. & Brooklyn Ave.

all according to RESOLUTION NO. 6112-88, Drawing No. _____, Sheets _____, and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2: THE CONTRACT SUM

The OWNER shall pay CONTRACTOR for the performance of the contract the unit price sum of \$ 45,758.74. In the event the amount of work is increased or decreased by OWNER, the contract sum shall be increased or decreased according to the unit price schedule set forth in the CONTRACTOR's Proposal.

ARTICLE 3: PROGRESS PAYMENTS

The OWNER shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by OWNER upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the CONTRACTOR and approved or revised by the Engineering Department

of the OWNER less the aggregate of previous payments, will be paid by OWNER to the CONTRACTOR.

ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the CONTRACTOR that the work is ready for final inspection and acceptance, the Board of Public Works and Safety will direct the Engineering Department of the OWNER to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works and Safety which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted. Thereupon the entire balance of the Contract sum shall be due and payable to the CONTRACTOR; provided only that CONTRACTOR shall first furnish OWNER, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

ARTICLE 5: WORKMEN'S COMPENSATION ACT

The CONTRACTOR will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen or any judgment of any court or award of any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said CONTRACTOR, shall be conclusive against CONTRACTOR as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that CONTRACTOR indemnify and hold harmless OWNER in the premises.

ARTICLE 6: NONDISCRIMINATION OF LABOR

The CONTRACTOR further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after comple-

ARTICLE 11: ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the CONTRACTOR and the OWNER under the provisions of this Contract shall be subject to the decision of the Director of Board of Public Works & Safety of the OWNER, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works and Safety.

ARTICLE 12: COMPLETION DATE

The CONTRACTOR agrees to complete the work specified in the contract within 9/30/88 consecutive calendar days after having been ordered by the OWNER to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the OWNER by the Mayor and Board of Public Works and Safety of the City of Fort Wayne, Indiana, shall not be binding upon the OWNER unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

ARTICLE 14:

This contract is governed by Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

(CONTRACTOR)

BY: Gain Construction
Henry Gain President
BY: Darrel Dain
_____, Secretary

CITY OF FORT WAYNE, INDIANA

BY:

Paul Helmke
Paul Helmke, Mayor

BOARD OF PUBLIC WORKS AND SAFETY

Angela S. Derheimer
Angela S. Derheimer
Director of Public Works

Daniel G. Heath
Daniel G. Heath
Director of Public Safety

C. David Silletto
C. David Silletto
Director of Administration & Finance

ATTEST:

Helen V. Gochenour
Helen V. Gochenour, Clerk

ACKNOWLEDGMENT

STATE OF INDIANA:

SS:

COUNTY OF ALLEN:

BEFORE ME, a Notary Public, in and for said County and State,
this 11th day of August, 1988, personally appeared the
within named Henry Gaines, who being by me first duly
sworn upon their oaths say that they are the President
and Darrell Gaines, Secretary respectively, of Gaines Construction
and as such duly authorized to execute the foregoing instrument and
acknowledged the same as the voluntary act and deed of
_____ for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official
seal.

Helen V. Gocher
NOTARY PUBLIC
HELEN V. GOCHER

Type or Print Name of Notary

MY COMMISSION EXPIRES: 6-16-91

ACKNOWLEDGMENT

STATE OF INDIANA)

) SS:

COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 17th day of Aug., 1988, personally appeared the within named Paul Helmke, Mayor of the City of Fort Wayne; Angela S. Derheimer, Daniel G. Heath, and C. David Silletto, members of the Board of Public Works and Safety, City of Fort Wayne, Indiana; and Helen V. Gochenour, Clerk of the Board of Public Works and Safety, City of Fort Wayne, Indiana, to me personally known, who being by me duly sworn said that they are respectively the Mayor of the City of Fort Wayne, the Members and Clerk of the Board of Public Works and Safety of the City of Fort Wayne, Indiana, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledged said instrument to be the voluntary act and deed of said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Carolyn S. Eschmann
NOTARY PUBLIC

Carolyn S. Eschmann
Type or Print Name of Notary

My Commission Expires: 6-16-91

Approved by the Common Council of the City of Fort Wayne on day of _____, 19____.

Special Ordinance No. _____.

Performance and Payment Bond

Bond # SBP 1202888

KNOW ALL MEN BY THESE PRESENTS: that

Gaines Construction

217 W. Washington Center Road

Fort Wayne, Indiana 46825

as Principal, hereinafter called Contractor and,

Indiana Lumbermens Mutual Insurance Company

7366 N. Lincoln

Lincolnwood, Illinois 60646

as Surety, hereinafter called Surety, are held and firmly bound unto

City of Fort Wayne, Indiana

(Here insert full name and address or legal title of Contractor)

(Here insert full name and address or legal title of Surety)

(Here insert full name and address or legal title of Owner)

as Obligee, hereinafter called Owner, in the amount of

Forty Five Thousand Seven Hundred Fifty Eight & 74/100****Dollars
Dollars (\$45,758.74*****),

for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Contractor has by written agreement dated 8/3/ 19 88 entered into a contract with Owner for Res. 6112-88 Westfield NSA '88

in accordance with Drawings and Specifications prepared by

(Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that, if the Principal shall promptly and faithfully perform said Contract and make payment to all claimants, as hereinafter defined, for all labor and material used in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- A) Whenever Contractor shall be, and declared by owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall either
 - 1) Complete the Contract in accordance with its terms and conditions; or
 - 2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof, subject to the limitations in Paragraph D.
- 3) The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.
- B) 1) A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

PRINCIPAL Gaines Construction EFFECTIVE DATE August 12, 1988
217 W. Washington Center Road Fort Wayne, Indiana 46825
(STREET ADDRESS) (CITY) (STATE) (ZIP CODE)
CONTRACT AMOUNT _____ AMOUNT OF BOND \$ 45,758.74
POWER NO. SBP 12028882

KNOW ALL MEN BY THESE PRESENTS, that the Indiana Lumbermens Mutual Insurance Company, a Corporation duly organized and existing under the laws of the State of Indiana, with its principal office in the City of Indianapolis, Indiana, does hereby make, constitute and appoint Jerry Bey

State of Illinois

as its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred to sign, execute, acknowledge and deliver any and all Bonds and undertakings, recognizances, contracts of indemnity, and other writings obligatory in the nature thereof for and on its behalf as follows:

The obligation of the Company shall not exceed four million (\$4,000,000.00) dollars.

And to bind the Corporation thereby as fully and to the same extent as if such Bonds and undertakings, recognizances, contract of indemnity, and other writings obligatory in the nature thereof were signed by the President, sealed and duly attested by the Secretary of the Corporation, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. This Power of Attorney is executed and may be revoked pursuant to and by authority granted by Article IV, Section 2-A (1) and (2) of the By-Laws of the Indiana Lumbermens Mutual Insurance Company, which reads as follows:

- (1) The President or any Vice President shall have the power and authority, by and with the concurrence with the Secretary of the Corporation, to appoint Attorneys-in-Fact for purposes only of executing and attesting to Bonds and undertakings, recognizances, contracts of indemnity, and other writings obligatory in the nature thereof, and at any time to remove any such Attorney-in-Fact and to revoke the power and authority given to him.
- (2) Attorneys-in-Fact when so appointed shall have power and authority, subject to the terms and limitations of the Powers of Attorney issued to them, to execute and deliver on behalf of the Corporation any and all Bonds and undertakings, recognizances, contracts of indemnity, and other writings obligatory in the nature thereof, and such instrument executed by any such Attorney-in-Fact shall be as binding upon the Corporation as if signed by an Executive Officer and sealed and attested by the Secretary.

IN WITNESS WHEREOF, the Indiana Lumbermens Mutual Insurance Company has caused these presents to be signed by its Vice President, attested by its Secretary and its Corporate Seal to be hereto affixed this FIRST day of JUNE 19 88.

ATTEST:

By L. W. Rodney
Secretary



Indiana Lumbermens Mutual Insurance Company

By [Signature]
Vice President

STATE OF INDIANA }
COUNTY OF MARION } SS:

On this FIRST day of JUNE 19 88, before me personally came the individual who executed the preceding instrument, to me known, who being by me duly sworn, acknowledged the execution of the above instrument and did depose and say; that he is the therein described and authorized officer of the Indiana Lumbermens Mutual Insurance Company; that he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation; and that he signed his name thereto by like order.

August 10, 1990
My Commission Expires



Letty M. Nieten
Notary Public

STATE OF INDIANA }
COUNTY OF MARION } SS:

I, the undersigned, Secretary of the Indiana Lumbermens Mutual Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Indiana Lumbermens Mutual Insurance Company, which is still in force and effect.

This Certificate may be signed and sealed by facsimile under and by the authority of the following resolution of the Board of Directors of Indiana Lumbermens Mutual Insurance Company at a meeting duly called and held on the 12th day of June 1973.

"RESOLVED: That the use of printed facsimile of the Corporate Seal of the Company and of the signature of the Secretary on any certification of the correctness of a copy of an instrument executed by the President or a Vice President pursuant to Article IV, Section 2-A (1) and (2) of the By-Laws appointing and authorizing Attorney-in-Fact to sign in the name and on behalf of the Company Bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, with like effect as if such seal and such signature had been manually affixed and made, hereby is authorized and approved."

In witness whereof, I have hereunto set my hand and affixed the seal of said Corporation, this 12th day of August 19 88.

(SEAL)



L. W. Rodney
Secretary

Read the first time in full and on motion by Talarico, seconded by Quinn, and duly adopted, read the second time by title and referred to the Committee on Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____, day of _____, 19____, at _____ o'clock _____ M., E.S.T.

DATED: 9-13-88

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Talarico, seconded by Quinn, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	<u>8</u>			<u>1</u>
<u>BRADBURY</u>	<u>✓</u>			
<u>BURNS</u>	<u>✓</u>			
<u>GIAQUINTA</u>	<u>✓</u>			
<u>HENRY</u>				<u>✓</u>
<u>LONG</u>	<u>✓</u>			
<u>REDD</u>	<u>✓</u>			
<u>SCHMIDT</u>	<u>✓</u>			
<u>STIER</u>	<u>✓</u>			
<u>TALARICO</u>	<u>✓</u>			

DATED: 9-27-88

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) _____ (APPROPRIATION) _____ (GENERAL) _____

(SPECIAL) (ZONING MAP) _____ Ordinance ORDINANCE RESOLUTION NO. J-148-88

on the 27th day of September, 1988,

Sandra E. Kennedy ATTEST
SANDRA E. KENNEDY, CITY CLERK

SEAL James Stier
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28th day of September, 1988, at the hour of 11:30 o'clock A. M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 6th day of October, 1988, at the hour of 5:15 o'clock P. M., E.S.T.

Paul Helmke
PAUL HELMKE, MAYOR

TITLE OF ORDINANCE Contract for Res. 6112-88, Westfield NSA '88, curbface walk, drives
DEPARTMENT REQUESTING ORDINANCE Board of Public Works & Safety & yardwalks

SYNOPSIS OF ORDINANCE The Contract for Res. 6112-88, Westfield NSA '88 is for new
construction of curbface walk, drives & yardwalks on Electric Ave. between
Taylor & Brown St. (both sides). Also replacement of curbface walk, drives
and center island curbing on Carlton Ct. from Carlton Ave. to the North terminu
and partial replacement of easement walk between Carlton Ct. & Brooklyn Ave.
Gaines Construction Company is the contractor.

PRIOR APPROVAL RECEIVED ON 8/23/88

J-88-09-05

EFFECT OF PASSAGE Improvement by walks and drives at above area

EFFECT OF NON-PASSAGE _____

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$45,758.74

ASSIGNED TO COMMITTEE _____

BILL NO. S-88-09-05

REPORT OF THE COMMITTEE ON PUBLIC WORKS

WE, YOUR COMMITTEE ON PUBLIC WORKS TO WHOM WAS
REFERRED AN (ORDINANCE) ~~(RESOLUTION)~~ ^{XXXXXXXXXX} approving Contract
for Res. 6112-88, Westfield NSA'88, curbface walk, drives,
and yardwalks between Gaines Construction Company and the
City of Fort Wayne, Indiana, in connection with the Board of
Public Works and Safety

HAVE HAD SAID (ORDINANCE) ~~(RESOLUTION)~~ UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) ~~(RESOLUTION)~~

YES

NO

<u>Samuel J. Talarico</u>	SAMUEL J. TALARICO	_____
<u>Mark E. GiaQUINTA</u>	CHAIRMAN	_____
<u>David C. Long</u>	MARK E. GiaQUINTA	_____
<u>James S. Stier</u>	VICE CHAIRMAN	_____
<u>Janet G. Bradbury</u>	DAVID C. LONG	_____
	JAMES S. STIER	_____
	JANET G. BRADBURY	_____

CONCURRED IN 9-27-88

Sandra E. Kennedy
Sandra E. Kennedy
City Clerk